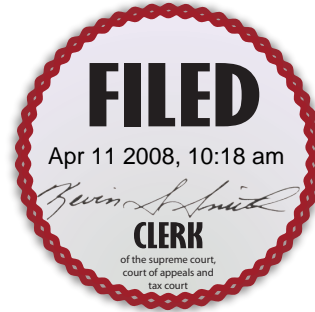


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANDREA AMORE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 17A04-0710-CR-563

APPEAL FROM THE DEKALB SUPERIOR COURT
The Honorable Kevin P. Wallace, Judge
Cause No. 17D01-0608-FD-140

April 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a jury trial, Appellant-Defendant Andrea Amore was convicted of Resisting Law Enforcement Using a Vehicle, a Class D felony,¹ and Contributing to the Delinquency of a Minor as a Class A misdemeanor,² for which she received concurrent sentences of one and one-half years and ninety days, respectively, in the Department of Correction. Amore's sole challenge upon appeal is to the sufficiency of the evidence to support her conviction for resisting law enforcement. We affirm.

FACTS AND PROCEDURAL HISTORY

On August 28, 2006, at approximately 8:55 p.m., Deputy Jeremy Western of the DeKalb County Sheriff's Department observed a vehicle at mile marker 129 on Interstate 69 driving northbound at a high rate of speed. Deputy Western, who accelerated to approximately 115 miles per hour, approached the vehicle with his lights and siren activated. The vehicle responded by increasing its speed. Deputy Western followed, observing that the vehicle was green, that it had no license plate, and that there were two people inside, a driver and a passenger. Deputy Western positioned his spotlight on the vehicle's mirror. According to Deputy Western, the vehicle reached speeds of 125 miles per hour, and the driver also slammed on the brakes two or three times, at which point Deputy Western's police car either touched the vehicle's bumper or came close to doing so. As Deputy Western followed the vehicle, the passenger threw objects out the window at him. According to Deputy Western, who observed the passenger's face, this person

¹ Ind. Code §§ 35-44-3-3(a)(3) and (b)(1)(A) (2006); Ind. Code § 35-41-1-28 (2006).

² Ind. Code § 35-46-1-8 (2006).

was not Amore. Deputy Western believed this passenger's hair was "blondish brown." Tr. p. 99.

At approximately mile marker 144, the vehicle rear-ended another vehicle, left the road, and came to a stop in a soybean field. Amore and another individual, Kalynn Rautiola, were standing by the vehicle. Deputy Western identified Rautiola as the passenger who threw objects out the window at him. A picture of Rautiola the night of the incident showed that she had "reddish dark" hair. Tr. p. 117. Amore told Deputy Western at the scene that she had been the driver and that she and Rautiola had been trying to kill themselves. She similarly told Deputy Aaron Fike of the Waterloo Marshal's Department, who was called to assist, that Rautiola had not been the driver. Deputy Western placed Amore in handcuffs and took her to the hospital and to jail. Amore subsequently entered a written statement in which she indicated she had operated the vehicle during the incident. Deputy Western subsequently issued Amore a citation for throwing objects out of the vehicle, which he admitted at trial should instead have been issued to the passenger Rautiola.

On August 8, 2006, Amore was charged with resisting law enforcement using a vehicle and contributing to the delinquency of a minor. During an August 21, 2007 jury trial, Amore testified, contrary to her representations at the time of the incident, that she was the passenger who threw objects out of the vehicle, and that Rautiola was the driver. Amore denied having told Deputy Fike that she was the driver and indicated that she had claimed to be the driver in her written statement in order to relieve Rautiola of any legal burden. In support of her version of these events, Amore testified that her hair was light

brown at the time of the incident, similar to the hair color Deputy Western had noticed on the passenger.

The jury found Amore guilty on both counts, and the trial court sentenced her to an aggregate sentence of one and one-half years in the Department of Correction. This appeal follows.

DISCUSSION AND DECISION

Amore's sole challenge on appeal is to the sufficiency of the evidence to support her conviction for resisting law enforcement. Our standard of review for sufficiency-of-the-evidence claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

In challenging her conviction, Amore argues that she was the passenger rather than the driver. In support of this argument, Amore points to Deputy Western's testimony that the passenger's hair color was "blondish brown," which she claims described her hair color on the day of the incident rather than Rautiola's, which was "reddish dark." Amore

further points to the two citations Deputy Western issued her for littering, which she claims is indicative of his conclusion that she was the passenger.

Amore's challenge to the sufficiency of the evidence is merely an invitation to reweigh the evidence, which we decline to do. First, Deputy Western testified that his issuance of the citations to Amore was a mistake, given his belief that Rautiola was the passenger. Further, the jury was within its fact-finding discretion to place little weight on Deputy Western's perceptions of Amore's and Rautiola's varying hair color shades as he followed them at speeds in excess of one hundred miles per hour at dusk. Amore admitted to both Deputy Western and Deputy Fike that she was the driver, and she filled out a detailed statement to this effect. The jury was entitled to find the deputies' testimony and Amore's own written statement credible and to discredit her testimony that these statements were instead misrepresentations of the facts. Giving due deference to the fact-finder, we conclude there was sufficient evidence to convict Amore of resisting law enforcement.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.